

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed but does so for a different reason than that given by the Administrative

Law Judge. The Administrative Law Judge found that claimant's injury was temporary, implying that the condition had completely resolved. The Board, on the other hand, finds simply that claimant has not proven she has functional impairment from the injury.

Findings of Fact

1. Claimant worked as a cook for respondent and also did scheduling, dishes, and general cleaning. Claimant alleges injury to her hands, forearms, neck, and shoulders as a result of her work for respondent, with symptoms beginning when she worked as a dishwasher and serving tables on the evening of August 1, 1995. According to claimant, the symptoms have remained essentially the same since that date. She continued to work for respondent until February 1996.
2. Respondent provided a list of three physicians and claimant chose Dr. J. Mark Melhorn as her treating physician. Dr. Melhorn treated claimant from June 3, 1996, through September 16, 1996. He diagnosed painful right and left upper extremities, but he found claimant's complaints varied from visit-to-visit and concluded claimant was magnifying her symptoms. He testified that, in his opinion, claimant has no permanent impairment.
3. Claimant's injury was evaluated by Dr. Robert A. Rawcliffe, Jr., at the request of respondent's counsel. He was unable to establish any specific diagnosis and also concluded claimant has no permanent impairment.
4. Dr. Daniel D. Zimmerman examined and evaluated claimant's injury at the request of claimant's counsel. He diagnosed right and left side chronic tendinitis as well as nerve entrapment syndrome on both the right and left. He also diagnosed chronic cervical paraspinal myofascitis with greater occipital nerve entrapment syndromes on the right and left. He rated the impairment as 17 percent of the whole body.

Conclusions of Law

1. Claimant has the burden of proving his/her right to an award of compensation and of proving the various conditions on which that right depends. K.S.A. 44-501(a).
2. The Board concludes that claimant has failed to prove she has a permanent impairment or disability from the alleged injury.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Nelsonna Potts Barnes on July 29, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Randy S. Stalcup, Wichita, KS
Richard J. Liby, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director